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**NEW JERSEY STATE BOARD
OF MEDICAL EXAMINERS**

STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
BOARD OF MEDICAL EXAMINERS
DOCKET NO.

IN THE MATTER OF THE SUSPENSION :
OR REVOCATION OF THE LICENSE OF : Administrative Action

IRWIN M. BERGER, D.P.M.
License No. MD818

CONSENT ORDER

TO PRACTICE PODIATRIC MEDICINE :
IN THE STATE OF NEW JERSEY

This matter **was** opened in November 1998 to **the** New Jersey State Board of Medical Examiners ("Board") by **the** receipt of information from Allen Gennis, Senior Public Health Investigator of the North Arlington Health Department, indicating that the continued practice of podiatric medicine **by** respondent Irwin M. Berger, D.P.M., may represent a clear and imminent danger to the **public** health, safety and welfare due to unsanitary office conditions.

CERTIFIED TRUE COPY

Inspections of respondent's two podiatric offices located at 13-29 River Road, **Fair** Lawn, New Jersey, and 28 Ridge Road, North Arlington, New Jersey, by the Enforcement Bureau, Division of Consumer Affairs, **disclosed** that respondent maintained his podiatric office practices at those locations in a dirty, cluttered and **unsafe** condition without adherence to **appropriate** sanitary practices, without registering as a medical waste generator pursuant to N.J.S.A. 13:1E-48.1 and N.J.A.C. 7:26-3(a), and as to the Fair Lawn **office**, without adherence to certain Department of Environmental Protection regulations. In addition, respondent's New Jersey Controlled Dangerous **Substances** ("C.D.S.") registration had lapsed **at** the time the Enforcement **Bureau** inspected his North **Arlington** office on December 16, 1998. In fact, this registration had actually expired in October 1995. Respondent renewed said registration on December 18, 1998, prior to the **inspection** of his Fair Lawn office premises **on** December 22, 1998.

Respondent signed an Interim Consent Order on January 7, 1999 in **which** he **agreed** to close both offices until they were put **in** a clean condition comporting with accepted medical standards. When Dr. Berger cleaned and sanitized both offices, he was permitted to re-open his offices.

Respondent has appeared before a Preliminary Evaluation Committee ("Committee") of the New Jersey Board of Medical Examiners on two occasions to review two separate areas of his

podiatric practice. Specifically, on August 4, 1999, respondent appeared with counsel and testified to the unsanitary conditions in his offices; and on July 5, 2000, respondent appeared without counsel and testified to his care and treatment of patient V.R. Dr. Berger admitted that prior to the Enforcement Bureau's inspections of his offices, he had not kept his office premises in a clean, neat and sanitary condition. He also admitted that his C.D.S. registration had lapsed in October 1995 and had not been renewed until December 18, 1998. As to his care and treatment of V.R., Dr. Berger further admitted that he had been prescribing Vicodin for V.R. while his C.D.S. registration was lapsed. Dr. Berger reviewed copies of patient records for V.R. provided by the Attorney General because he could no longer find his original records or copies. He acknowledged that the records were extremely sparse, to the point where he could not tell the Committee exactly what treatment had been performed on certain occasions. In addition, the records were not in chronological order. He testified that there were times when he treated V.R. and did not enter that fact in her patient record. He also conceded that his patient records contained no operative notes.

Respondent being desirous of resolving this matter, and the Board finding the within Order to be adequately protective of the public interest;

IT IS THEREFORE on this 25th day of November, 2002,

ORDERED that:

1. **Respondent** Irwin Berger, D.P.M., **be** and hereby is reprimanded for the failure to maintain clean **and sanitary** conditions in respondent's two podiatric offices; for failing to re-new his Controlled Dangerous Substances ("C.D.S.") registration and permitting **it** to lapse; for **prescribing** C.D.S. with a **lapsed** C.D.S. registration; for failure to maintain and keep patient records for **the** required **time** period pursuant to N.J.A.C. 13:35-6.5; and for failure to prepare complete and **legible** patient records for V.R. in violation of N.J.A.C. 13:35-6.5.

2. Respondent shall **take** and successfully complete a Board **approved** course in **appropriate** record keeping techniques, at his own expense, within one **year** of the entry of this Order. Respondent shall submit to the Board verification of the completion of **said** course.

3. Respondent shall pay a civil penalty in the amount of \$1500.

4. Respondent shall pay costs in the amount of \$12,095.53

5. The costs and civil penalty total \$13, 595.53 and shall be **paid** at the Court Rule rate of 5% annual interest. **Payment** shall **be** made in *the* form of \$200.00 per month for the first four months followed by \$400.00 for the following four months. The balance will be paid of€ thereafter at **the** rate of \$1200 per month until **paid** in full. Payments shall be **made** by certified check or

money order payable to **the** Board of Medical Examiners and sent to the **attention** of the Executive Director of the Board, Post Office Box **183**, Trenton, New Jersey, 08625-0183. Payments shall **be** delivered to the Board no later than the fifth day of **each** month commencing with November 5, 2002. The Board reserves its right to file a Certification of **Debt** for the **full** amount due. Failure to make **timely** payments shall be considered a violation of this **Order** and shall result in acceleration of **the** balance of debt.

6. Respondent shall continue to cause each of his offices to **be** maintained in a clean and **neat** condition comporting with accepted medical sanitary standards and **all** Department of Environmental Protection statutes and regulations.

7. Respondent shall pay the costs of any and **all** periodic, unannounced inspections, including but not limited to, **inspection** of sanitary conditions in both offices, by the Enforcement Bureau of **the** Division of Consumer Affairs. Said **inspections** shall continue **until** twelve months from the date of entry of the within Order.

8. Respondent shall ensure that he keeps and maintains a valid medical waste generator number pursuant to N.J.A.C. 7:26-3(a).

9. Respondent, shall not permit his Controlled Dangerous Substances registration to lapse in the future, if he wishes to continue to prescribe controlled dangerous substances.

10. Respondent shall comply with all terms **and** conditions of the within Order, and with all statutes and regulations dealing with **the practice** of podiatric medicine and **surgery** in this State. If respondent fails to **comply** with any of **the** aforesaid terms, the Board may, **on** notice to respondent with an opportunity to **be** heard, **enter** an Order to immediately suspend respondent's license, subject to a right **in** respondent to **move** for dissolution of any such Order on two days' notice to **the** Board and to the Attorney General.

STATE BOARD OF MEDICAL EXAMINERS

By: William V. Harrer M.D. B.L.D.
William V. Harrer, M.D., B.L.D.
President

I **have** read **and** understood the within Order and agree to **be** bound **by** its **terms**. Consent **is** hereby given to the Board to enter this Order.

Irwin Berger, D.P.M.
Irwin Berger, D.P.M.